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No. 48

In the Supreme Court of the United States

OCTOBER TERM, 1954

LOUIS SHOMBERG, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the Court of Appeals (R. 14–21) are reported at 210 F. 2d 82. The opinion of the District Court (R. 8–13) is reported at 115 F. Supp. 336.

JURISDICTION

The judgment of the Court of Appeals was entered January 25, 1954 (R. 21–22). The petition for a writ of certiorari was filed April 24, 1954, and was granted October 14, 1954 (R. 23). The jurisdiction of this court rests on 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Section 405 (a) of the Immigration and Nationality Act of 1952 provides, *inter alia*, that pending proceedings and any "right in process of acquisition" on the Act's effective date (December 24, 1952) shall be governed by prior law "unless otherwise specifically provided". Section 405 (b) provides that petitions for naturalization filed before this date shall be determined in accordance with prior law "[e]xcept as otherwise specifically provided in title III" of the Act. Section 318[1] specifically provides that "[n]otwithstanding the provisions of section 405 (b)" no petition for naturalization shall be finally heard if there is pending a deportation proceeding initiated under any act.

Petitioner filed a petition for naturalization prior to the effective date of the 1952 Act. After the effective date, deportation proceedings were instituted against him on grounds which were not a basis for deportation before the new Act became effective.

The question presented is whether, irrespective of the explicit provisions of Sections 318 and 405 (b), petitioner may, nevertheless, compel a final hearing on his naturalization petition by reason of Section 405 (a), on the theory that his pending naturalization petition either began a pro-

[1] Section 318 is found in title III of the Act. Section 405 (a) is in title IV, and thus is not one of the sections which is excepted from Section 405 (b).

ceeding or gave him a right in process of acquisition within the intended meaning of that section.

STATUTES INVOLVED

(1) *Savings Clauses:* Section 405 of the Immigration and Nationality Act of 1952, 66 Stat. 163, 280, 8 U. S. C. 1101, note, in pertinent part, provides:

> SEC. 405. (a) Nothing contained in this Act unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, * * * or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any * * * proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, * * * or matter, * * * done or existing, at the time this Act shall take effect; but as to all such * * * proceedings, statutes [sic][2] conditions, rights, acts, things, * * * or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. * * *
>
> (b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

---

[2] Presumably the word "statuses" was intended.

The full text of Sections 405 (a) and 405 (b) of the 1952 Act and of the savings clauses of the Nationality Act of 1940, Sections 347 (a) and 347 (b), 54 Stat. 1137, 1168, 8 U. S. C. (1946 ed.) 747, are set forth in Appendix A, *infra*, pp. 47–48, in parallel columns so as to facilitate comparison.

(2) *Priority Provisions:* Section 318 of the 1952 Act, 66 Stat. 244, 8 U. S. C. 1429, gives deportation proceedings and findings priority over proceedings for naturalization. In pertinent part, it provides:

> SEC. 318. * * * Notwithstanding the provisions of section 405 (b), and except as provided in sections 327 and 328 no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: * * *

Similar priority provisions were found in Section 329 (c) of the Nationality Act of 1940, as added by Section 27 of the Subversive Activities Control Act of 1950, 64 Stat. 987, 1015, 8 U. S. C. (1946 ed. Supp. V) 729 (c). In view of petitioner's argument based on the use of the semicolon in the above sentence of Section 318 (Pet. Br. pp. 27–

30), the legislative history of that section is set forth at length in Appendix B, *infra*, pp. 50–56.

(3) *Other Provisions:* Sections 241 (a) (4), 241 (d), 311, 313 (a), 315 (a) and 331 (d) of the 1952 Act and Section 310 (a) of the 1940 Act are set forth in Appendix C, *infra*, pp. 56–63.

STATEMENT

On December 22, 1952, two days before the effective date of the Immigration and Nationality Act of 1952, petitioner filed a petition for naturalization in the District Court for the Southern District of New York[3] (R. 2). The customary pre-naturalization investigation was thereupon initiated by the Immigration and Naturalization Service (R. 5). This investigation disclosed that petitioner had a criminal record, which included convictions for grand larceny in the second degree in 1913, and for manslaughter in the first degree in 1915 (R. 5–6).

Section 241 (a) (4) of the 1952 Act made aliens subject to deportation whenever convicted, at any time after entry, of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct.[4] Accordingly, on June 22,

[3] This petition was filed under Section 310 (a) of the Nationality Act of 1940, 54 Stat. 1144, 8 U. S. C. (1946 ed.) 710 (a), which exempted the alien spouse of a citizen from having to comply with the normal condition precedent of first filing a declaration of intention.

[4] Under prior law, deportation for two convictions of crimes involving moral turpitude was limited, *inter alia*, by

1953, a warrant of arrest was issued charging petitioner with being illegally in the United States in violation of Section 241 (a) (4), based on his 1913 and 1915 convictions (R. 6). On June 23, 1953, petitioner was taken into custody under this warrant of arrest, and thereafter released on bond (R. 6). A hearing on the deportation charge was held June 24, 1953, before a Special Inquiry Officer (R. 3, 6), but no final decision as to deportability was made, because of a request by petitioner's counsel that he be granted until August 3, 1953, to submit additional evidence and a brief in support of his application to terminate the deportation proceedings (R. 6).

On July 28, 1953, petitioner, through an order to show cause entered in his naturalization case, moved (1) to compel a final hearing on his petition for naturalization, and (2) to stay the deportation proceedings pending the final hearing upon and adjudication of his naturalization petition (R. 1–2). On August 21, 1953, this motion was denied by Judge Dimock, who held (R. 8–13) that the priority provisions of Section 318 of the 1952 Act, which reenacted Section 27 of the Subversive Activities Control Act, prevented a final

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Section 19 (a) of the Immigration Act of 1917, 39 Stat. 874, 889, 8 U. S. C. (1946 ed.) 155 (a), to crimes committed after the effective date of that Act. Thus petitioner, though not deportable under prior law, apparently became subject to deportation on the effective date of the 1952 Act.

hearing on the petition for naturalization during the pendency of the deportation proceedings. In his opinion, he stated (R. 12–13):

> * * * section 405 (b) is the only provision of the Immigration and Nationality Act of 1952 which, in pending cases, makes the provisions of the old act applicable to the proceedings after the filing of the petition. It is true that the part of section 405 (a) which continues the old act in force as to any "right in process of acquisition" would, in its general terms, apply to naturalization proceedings but the fact that section 405 (b) specifically makes exactly that provision as to naturalization proceedings indicates that the general language in section 405 (a) does not apply to them. Thus, when section 318 provides for priority of deportation proceedings "notwithstanding the provisions of section 405 (b)", it precludes reliance on the preservation of rights under the old law to keep naturalization proceedings from being superseded by deportation proceedings.[5]

On January 25, 1954, the Court of Appeals affirmed, in an opinion by Judge Clark (R. 14–19). While concluding that the order denying petitioner's motion was properly appealable

[5] In the record (R. 13), two lines have obviously been transposed in printing. This typographical error has been corrected in the above quotation. See *Application of Shomberg*, 115 F. Supp. 336, 340.

(R. 15), the court rejected every one of petitioner's contentions directed to the merits (R. 15–19). Judge Frank filed a brief concurring opinion (R. 19–21). Pending a decision by this Court, the deportation proceedings against petitioner have been stayed (Pet. Br. 6).

SUMMARY OF ARGUMENT

In our brief in *United States* v. *Menasche*, No. 104, this Term, we developed two points which likewise govern this case: (1) Section 405 (b) is the only savings clause in the Immigration and Nationality Act of 1952 applicable to the hearing and determination of naturalization petitions; and (2) the term "right in process of acquisition", used in Section 405 (a) of the 1952 Act, does not apply to the hearing and determination of such petitions. In this brief, wherever possible, the material developed in our *Menasche* brief will be merely summarized. This case also raises certain problems, arising out of the application of Section 318 of the 1952 Act, which are not at issue in *Menasche*.

I

Section 318 of the 1952 Act provides for the priority of deportation proceedings, brought pursuant to "this or any other Act," over naturalization proceedings, so as to prevent undesirable aliens from totally nullifying the deportation process by acquiring a naturalization decree before a final decision could be entered in the de-

portation case. These priority provisions were a substantial reenactment of similar legislation first adopted in the Subversive Activities Control Act of 1950. Section 318 is by its terms squarely applicable to petitioner's case. Thus his motion for an immediate hearing on his naturalization petition, despite the pendency against him of uncompleted deportation proceedings, was properly denied, unless the savings clauses of the 1952 Act are here applicable.

II

When analyzed in the light of their legislative history and statutory context, the priority provisions of Section 318 and the savings provisions of Sections 405 (a) and 405 (b) of the 1952 Act manifest, in unmistakable fashion, a positive congressional intent that the provisions of Section 318 were to become immediately applicable and were not to be governed in any way by either of the two savings clauses.

A (1). Section 405 (b) provides:

> SEC. 405. * * * (b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

While petitioner's naturalization petition was in fact pending on the effective date of the Act,

and thus falls within the specific subject matter governed by this section, it is excepted therefrom by the provisions of Section 318, from title III of the Act, which contains the introductory clause "[n]otwithstanding the provisions of section 405 (b)".

Petitioner's argument, that the general savings provisions of Section 405 (a) also govern the hearing and determination of naturalization petitions, gains plausibility only when certain phrases appearing in that section are wholly removed from their statutory context and legislative history. Analysis of the two savings clauses discloses a clear intention that the broad general terms of Section 405 (a) should not govern the same subject matter explicitly and completely dealt with in Section 405 (b): namely, the hearing and determination of petitions for naturalization.

Sections 405 (a) and 405 (b) were derived from similar provisions appearing in Section 347 (a) and 347 (b) of the Nationality Act of 1940. When identical words and phrases were used in the 1952 enactment, they were intended to have the same meaning as in the earlier law. Such changes as were made in the 1952 Act do not alter the underlying structure of the savings clauses or make Section 405 (a) control 405 (b); just as Section 347 (a) obviously did not control Section 347 (b) in the earlier Act. In particular, the legislative history and context of the new term "right in process of acquisition", placed in Sec-

tion 405 (a) to resolve conflicting court decisions, show that this phrase does not apply to the hearing and determination of naturalization petitions, but rather to such matters as the derivation of citizenship by a minor without court proceedings, through his parent's naturalization.

A (2). Petitioner's contentions, besides ignoring the history and context directly applicable to the words and phrases used in Section 405, would have serious unintended effects on other portions of the Act.

a. If such terms as "any * * * proceedings, or * * * right in process of acquisition" are to be held applicable to the hearing and determination of naturalization petitions, the same subject matter exclusively dealt with by Section 405 (b), this latter section would be rendered wholly redundant and meaningless.

b. Section 405 (b) begins "[e]xcept as otherwise specifically provided in title III". This excepting phrase dovetails with five provisions in title III, all of which begin with language such as "[n]otwithstanding the provisions of section 405 (b)". The five "notwithstanding" clauses could have been included with but one purpose in mind:—that of making the provisions introduced by these clauses immediately applicable to *pending* naturalization proceedings "notwithstanding" the savings provisions which would have otherwise prevented such immediate applicability. Two of these five sections give distinct

advantages, not previously available, to applicants for naturalization; the other three apply to persons generally classified under the terms "subversives" or "other undesirables," and drastically limit the right of such persons to be naturalized. Petitioner's reading of the statute would totally nullify the effect of these five "notwithstanding" clauses, thus thwarting the obvious legislative intent to have these provisions apply immediately to all naturalization hearings.

c. Furthermore, the acceptance of petitioner's contentions would be indirectly productive of substantial unintended inequities and anomalies. Certain favored aliens, such as veterans and spouses of United States citizens, were by prior law specially exempted from having to comply with various naturalization requirements. If Section 405 (a) is to govern, these favored aliens would have fewer rights with respect to naturalization under prior law than any member of the less favored alien groups who had taken, immediately on arriving in the United States, one of the required preliminary steps from which the favored group has been exempted.

A (3). There is no statutory interstice which prevents the priority provisions of Section 318 from applying to cases where subsequently commenced deportation proceedings are based on new grounds not theretofore available under prior law. No such interpretation is apparent from the face of the statute or is justified by its legis-

lative history. When originally enacted in 1950, the priority provisions became immediately effective as to all pending naturalization proceedings, without exception, whether deportation charges were based on old or new grounds. The 1952 reenactment of these priority provisions discloses a similar intent.

In sum, the conclusion is inescapable that Section 405 (b) is the only savings provision which is applicable to the hearing and determination of naturalization petitions. While it is phrased, as was Section 347 (b) of the 1940 Act, in terms of prior law controlling the determination of specific pending naturalization petitions, this phrasing necessarily implies that all future naturalization petitions, and all pending petitions exempted from Section 405 (b) by title III, are to be heard and determined in accordance with the requirements of the new law.

B. Petitioner's alternative contention, characterized in the court below as a "thoroughgoing semicolonization of §318" (R. 19), rests on the use of a semicolon rather than a comma to separate the priority provision relating to final findings of deportability from that relating to pending deportation proceedings. This contention is directly refuted by petitioner's erroneous assumption as to the origin of the semicolon; by the complete lack of any reason or explanation on the part of Congress to change the previous statutory scheme; by the absence of punctuation

in the clause excepting certain veterans from the operation of both of the priority provisions of Section 318; and by the inherent weakness and fallibility of punctuational argument generally and the specific weakness of this one in particular.

Since none of the savings provisions of the 1952 Act are here applicable, petitioner's motion for hearing on his naturalization petition during the pendency of deportation proceedings was properly denied. The judgment below should be affirmed.

ARGUMENT

In our brief in *United States* v. *Menasche,* No. 194, this Term, at pp. 11–36, two points were developed which are equally applicable in this case: (1) Section 405 (b) is the only savings clause in the Immigration and Nationality Act of 1952 applicable to the hearing and determination of naturalization petitions;[6] and (2) the term "right in process of acquisition," used in Section 405 (a) of the 1952 Act does not apply to the hearing and determination of such petitions. In this brief, wherever possible, the arguments and authorities in support of these two propositions will be somewhat summarized, so as to avoid unnecessary repetition. Some relevant supplemental supporting material has also been here incorporated.

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[6] Section 405 (a) preserves only "the *validity* of * * * [certain] petition[s] for naturalization." [Italics supplied.] Section 405 (b) relates solely and specifically to the *hearing* and *determination* of such petitions. Cf. *In re Shacar,* 140 F. 2d 180 (C. A. 7).

Additionally, this case involves certain new problems, arising out of the intended application of Section 318 of the 1952 Act, which are not in issue in *Menasche*. Section 318 provides that deportation proceedings brought pursuant to "this or any other Act" shall have priority over naturalization proceedings.

If it had not been for the enactment of the 1952 Act, there would be no bar to the holding of a final hearing in petitioner's naturalization case, since, under prior law, he would not have been deportable. However, Section 241 of the 1952 Act appears to render petitioner retroactively subject to deportation by reason of his two prior convictions for manslaughter and grand larceny.[7] Therefore, once deportation proceedings were commenced against petitioner in 1953, Section 318 became directly applicable.

In seeking to avoid the impact of Section 318, petitioner relies on a strained construction of both that section and the savings provisions of Section 405. As Judge Clark in his opinion for the court below properly pointed out, petitioner's labored interpretation cannot be sustained and "does violence to the Act" (R. 18). Petitioner's contentions regarding the savings provisions are dealt with in Point II, *infra*, pp. 19–46, and are wholly without merit. They are in many respects similar to those which were urged in *Menasche*, when that case was before the lower courts. Not only

[7] Section 241 (d), with exceptions not here applicable, expressly provides for deportation on the basis of offenses which occurred prior to the effective date of the 1952 Act.

do these contentions ignore the legislative history of the Act and the meaning most apparent from the statutory context, but they would result in wholly nullifying important provisions of the 1952 Act, and would create inequities and anomalies which were obviously never intended.[8]

I

PETITIONER'S MOTION FOR A FINAL HEARING ON HIS PETITION FOR NATURALIZATION WAS PROPERLY DENIED, SINCE THE PRIORITY PROVISIONS OF SECTION 318 OF THE IMMIGRATION AND NATIONALITY ACT OF 1952 BAR SUCH FINAL HEARINGS DURING THE PENDENCY OF DEPORTATION PROCEEDINGS

Section 318 of the 1952 Act, in pertinent part, provides:

> SEC. 318. * * * Notwithstanding the provisions of section 405 (b), and except as provided in sections 327 and 328 no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if

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[8] Petitioner urges alternatively (Pet. Br. 27–30) from an ambiguous punctuational variation, that the words "[n]otwithstanding the provisions of section 405 (b)" used in Section 318 do not apply unless and until a final finding of deportability has been made. As is shown, *infra*, pp. 45–46, this argument is not only based on an erroneous assumption as to the origin of the punctuation mark in question, but does obvious violence to the intended meaning of Section 318.

> there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: * * *.

This section gives final findings of deportability and pending deportation proceedings priority over all naturalization proceedings with two exceptions not here applicable.[9] They are generally referred to as "priority provisions."[10]

Prior to 1950, there were no similar provisions in our naturalization laws. The absence of such provisions led to a race between the Attorney General seeking to deport an alien, and the alien seeking to obtain naturalization (see R. 9), in cases where an individual was at the same time eligible to become a citizen and subject to deportation. By filing a naturalization petition and forcing a final hearing thereon, an alien could, if his petition were granted, effectively nullify the deportation proceedings. No matter how grave the grounds upon which the deportation proceedings were based, favorable action on the petition for naturalization would prevent deportation.

To remedy this situation, Senator McCarran, in 1950, included appropriate provisions, similar to those now found in Section 318 of the 1952

[9] The exceptions are in Sections 327 and 328, 66 Stat. 248, 249, 8 U. S. C. 1438, 1439, which relate to certain persons who had performed specified military service in our armed forces, or in those of our allies in World War II.

[10] See Appendix B, *infra*, pp. 50-56, for the detailed legislative history of this priority section.

Act, in his initial "omnibus bill" to revise and codify the immigration, nationality, and naturalization laws. S. 3455, 81st Congress, 2d Session. When it became evident that this bill would not be enacted in that session of Congress, Senator McCarran introduced similar priority provisions in an amendment which became incorporated in Section 27 of the Subversive Activities Control Act of 1950, 64 Stat. 1015, 8 U. S. C. (1946 Ed. Supp. V) 729 (c). This Act took immediate effect and contained no savings clause. Section 27 operated to prohibit naturalization, or the holding of final hearings, both prospectively and retroactively in the case of undetermined naturalization petitions already pending on the effective date of the Act. This was so even where the deportation proceedings were commenced, as in petitioner's case, subsequent to the pending naturalization proceedings. *United States ex rel. Jankowski* v. *Shaughnessy*, 93 F. Supp. 7 (S. D. N. Y.), affirmed, 186 F. 2d 580 (C. A. 2).

This provision worked no undue inequity on the alien against whom a deportation charge was pending. If the charge were found not to be sustained, he would then be eligible to proceed with his naturalization in the usual course. If it were sustained, he would fall within the category of aliens whom Congress wished to exclude from the United States and therefore from United States citizenship. Without these provisions, a

premium was placed upon the speed with which a potentially deportable alien was able to get his naturalization petition before the naturalization court and thereby tie the Government's hands.

Section 318 of the Immigration and Nationality Act of 1952 substantially reenacted Section 27 of the 1950 Act. By its terms, this section is expressly applicable to petitioner's case. Thus petitioner's motion for an immediate hearing on his naturalization petition, despite the pendency against him of uncompleted deportation proceedings, was properly denied, unless, as petitioner argues, the savings clauses of the 1952 Act apply in derogation of the priority provisions of Section 318 and thus to the facts of this case. As is shown in Point II, *infra*, pp. 19–46, the savings clauses do not here apply.

II

THE SAVING CLAUSES OF THE 1952 ACT ARE NOT APPLICABLE TO CASES INVOLVING THE PRIORITY PROVISIONS OF SECTION 318

A. SECTION 405 (B) IS THE ONLY SAVINGS PROVISION IN THE 1952 ACT WHICH IS APPLICABLE TO THE HEARING AND DETERMINATION OF NATURALIZATION PETITIONS

1. The savings clauses must be construed in the light of their legislative history and in context with all applicable portions of the Act

As we have already pointed out in our brief in *Monasche*, No. 104, this Term, at pp. 12 *et*

seq., the problem here presented is to construe the statute so as to effectuate the manifested intent of Congress, as reflected in the language, the legislative history, and the context of the Act. This was clearly and explicitly recognized by Judge Clark in his opinion for the Court of Appeals (see R. 16–19), which, after careful analysis, rejected petitioner's contentions regarding the intended meaning of the 1952 Act.

It is universally recognized that the savings clauses included in Section 405 of the 1952 Act were directly derived from similar savings provisions found in Section 347 of the 1940 Act.[11] Both the similarities and the differences between these provisions are significant. These savings clauses, in relevant part, provide:[12]

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[11] The full text of all relevant savings clauses of both Acts is set forth in Appendix A, *infra*, pp. 47–48.

[12] Italics supplied to indicate possible areas of conflict between the (a) and (b) subsections of the savings provisions of each Act. Petitioner's case rests primarily on such alleged conflicts.

1940 Act

SEC. 347. (a) Nothing contained in either chapter III or in chapter V of this Act, unless otherwise provided therein, shall be construed to affect the *validity of any* declaration of intention, *petition for naturalization*, * * * or other document *or proceeding which shall be valid* at the time this Act shall take effect; or to affect *any* * * * *proceedings*, civil or criminal, brought, or *any act, thing, or matter*, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such * * * proceedings, acts, things, or matters, the statutes or parts of statutes repealed by this Act, are hereby continued in force and effect.

(b) *Any petition for naturalization* heretofore filed which may be pending at the time this Act shall take effect *shall be heard and determined* within two years thereafter in accordance with the requirements of law in effect when such petition was filed.

1952 Act

SEC. 405. (a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the *validity of any* declaration of intention, *petition for naturalization*, * * * or other document *or proceeding which shall be valid* at the time this Act shall take effect; or to affect *any* * * * *proceedings*, civil or criminal, brought, or *any status, condition, right in process of acquisition, act, thing*, * * * *or matter*, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such * * * proceedings, statutes [sic], conditions, rights, acts, things, * * * or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. * * *

(b) Except as otherwise specifically provided in title III, *any petition for naturalization* heretofore filed which may be pending at the time this Act shall take effect *shall be heard and determined* in accordance with the requirements of law in effect when such petition was filed.

* * * * *

Petitioner relies, as does Menasche, on what he conceives to be a conflict between the express provisions of Section 405 (b), which singles out for specific consideration the hearing and determination of naturalization petitions, and certain phrases appearing in the broad general savings clause contained in Section 405 (a). This conflict results from the removal of certain words from their context in the statute, followed by a literal use of dictionary definitions. This technique is hardly conducive to the discovery of legislative intent. See *United States* v. *American Trucking Associations*, 310 U. S. 534, 542.

(*a*). *The 1940 Savings Clauses.* Petitioner fails to note that a similar apparent conflict also existed between the ancestral provisions—Sections 347 (a) and 347 (b) of the 1940 Act.[9] When Congress first set forth in Section 347 (b) of the 1940 Act a specific savings provision, applicable solely to the hearing and determination of petitions for naturalization, immediately following the very broad general provisions of Section 347 (a), it was obviously intended that the specific should govern the general. This is shown by the presence of the two-year limitation, which clearly negates the possibility of prior law having been intended to apply indefinitely to the hearing and determination of pending naturalization pe-

[9] See the italicized words used in the parallel presentation, *supra*, p. 21.

titions, as would have been the case if Section 347 (a) had applied to such proceedings.

Of course, when removed from their statutory setting, such terms as "any * * * proceedings, * * * or any act, thing, or matter" used in Section 347 (a) might be literally applicable to the hearing and determination of naturalization petitions. However, it becomes wholly clear from the context that they were never meant to limit or qualify the explicit narrow provisions of Section 347 (b). Otherwise, as just noted, the two-year limitation provision of Section 347 (b) would have been rendered a total nullity, a result that was unquestionably never intended. It follows that broad general terms like "any * * * proceedings" used in Section 347 (a) did not include proceedings to hear and determine naturalization petitions.

While Section 347 (b) was phrased in terms of prior law controlling the determination of pending petitions for a period of two years, this phrasing necessarily implied that thereafter any remaining pending petitions, as well as all petitions subsequently filed, were to be heard and determined in accordance with the requirements of new law. No case arising under the 1940 Act has been found in which it was apparently even argued that any of the general provisions of Section 347 (a) should govern such hearings.

This meaning of the 1940 savings provisions, besides being plain on the face of the Act, is

likewise similarly apparent on the application of basic rules of statutory construction. As Chief Justice Taney remarked in *Perrine* v. *Chesapeake and Delaware Canal Co.*, 9 How. 172, 190:

> But we cannot take out of a statute a single word susceptible of different meanings, and expound it without reference to the context, and without any regard to the subject-matter of which the legislature is speaking, or to the provisions and language with which it is associated.

A second equally well-recognized and applicable principle, although surprisingly challenged by petitioner as regards the savings clauses of the 1952 Act,[9] is that a statute of general applicability, such as Section 347 (a), does not take precedence over the more particularized specific provisions of Section 347 (b). In such cases the general must give way to the specific. In reaffirming this familiar rule in *MacEvoy Co.* v. *United States*, 322 U. S. 102, 107, this Court stated:

> However inclusive may be the general language of a statute, it "will not be held to apply to a matter specifically dealt with in another part of the same enactment. * * * Specific terms prevail over the general in the same or another statute which might otherwise be controlling." *Ginsberg & Sons* v. *Popkin*, 285 U. S. 204, 208.

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[9] See petitioner's brief, pp. 17–22.

See also *Townsend* v. *Little*, 109 U. S. 504, 512; *McKee* v. *United States*, 164 U. S. 287, 294.

(*b*). *The 1952 Savings Clauses.* Analysis of both the similarities and the differences which are found in the 1952 savings clauses shows that no change was intended as respects the controlling nature of Section 405 (b) in the case of any apparent conflict with the general language of Section 405 (a). Just as Section 347 (b) in the 1940 Act was the only savings provision of that Act applicable to the hearing and determination of naturalization petitions, so is Section 405 (b) in the 1952 Act. The same basic organization appears in the savings provisions of both Acts. Subsection (a) in each Act is applicable generally to a wide variety of proceedings, things, and matters. Subsection (b) of each is made applicable exclusively to the hearing and determination of naturalization petitions. In large part the very same words are used and without change in order. Obviously, these identical words in the 1952 Act were intended to have the same sense as in the earlier enactment.

The changes and additions in the 1952 savings clauses altered neither the intended meaning of the words incorporated from the earlier enactment, nor the fundamental underlying structure of the savings provisions. Nor do they in any way extend the applicability of Section 405 (a) to the hearing and determination of naturalization petitions. Most of these changes and addi-

tions were made (1) because of the expanded scope of the 1952 Act, which, unlike the 1940 law, applies to immigration as well as nationality and naturalization matters; or (2) to reconcile ambiguities which had been disclosed by judicial decisions made under the 1940 Act; or (3) to exclude certain important sections of the new law from the savings clauses so as to make such sections immediately effective.

As already shown in our *Menasche* brief, at pages 14–15, the two-year limitation was omitted from Section 405 (b) so as to resolve the needless confusion created by such cases as *In re Shaver*, 140 F. 2d 180 (C. A. 7), *Petition of Hirsch*, 50 F. Supp. 638 (E. D. Pa.), *In re McInnis*, 50 F. Supp. 303 (D. Mass.), and *Petition of La Bella*, 52 F. Supp. 980 (D. Conn.).[15] Obviously the elimination of this provision from the (b) subsection of the savings clauses was not in any way intended to change or expand the prior meaning of any of the terms incorporated in the (a) subsection.

On the other hand, while Section 405 (b) was made more liberal as regards the time limitation applicable to hearings on pending naturalization petitions, its scope was specifically narrowed in certain very important respects by the express ex-

[15] It is also apparent that the two-year provision caused arbitrary distinctions between similarly situated aliens, with results depending on the speed with which a particular case could be reached for a final hearing.

clusion of five provisions found in title III of the 1952 Act. The inclusion of these title III exceptions, one of which was Section 318, could have had no other purpose than to make these particular sections immediately applicable to the hearing and determination of all naturalization petitions, and not merely to those filed after the effective date of the Act. This matter is analyzed in detail under sub-point 2, *infra*, at pp. 29–39.

The one change in the 1952 savings clauses which both petitioner and Menasche most strongly advance, as indicating a possible legislative intent to render Section 405 (b) meaningless and to make Section 405 (a) control the hearing and determination of naturalization petitions, is the inclusion in Section 405 (a) of the new terms "status", "condition", and "right in process of acquisition". These general terms, when removed from their context in the statute, might create the same sort of apparent conflict as the term "any * * * proceedings", the meaning of which has already been discussed, *supra*, p. 23. The same principles of construction apply to these three new terms, which were included in Section 405 (a) to resolve the conflict created by *United States ex rel. Aberasturi* v. *Cain*, 147 F. 2d 449 (C. A. 2) and *Bertoldi* v. *McGrath*, 178 F. 2d 977 (C. A. D. C.).[36]

[36] The three new terms were in fact lifted from these cases. In *Aberasturi*, 147 F. 2d at 452, the Second Circuit stated: "We think that [Section 347 (a)] does not cover a mere *condition*, unattended by any affirmative action by the alien" and

As is shown by a detailed analysis prepared by the Immigration and Naturalization Service and submitted to the Congressional Committees which were considering the bill in question (see Appendix A, *infra*, pp. 48–50), these terms were intended to cover such matters as the derivation of citizenship by a minor, without court decree, through his parent's naturalization. They were clearly not added to change the rules affecting the hearing and determination of naturalization petitions or to qualify or limit the explicit provisions and policy set forth in Section 405 (b) and in the five title III sections specifically singled out for immediate application to the hearing and determination of all such petitions.[17]

"relator's mistaken assertion * * * could not create [citizenship] *status*". In reaching a contrary conclusion in *Bertoldi*, 178 F. 2d at 978 and 979, the District of Columbia court stated: "Certainly the words of the saving clause in the 1940 statute— * * * proceedings, act, thing, or matter—were about as broad as language could be" and "the savings clause must have referred to *rights in process of acquisition*." [Italics supplied in both quotations.] See particularly, Appendix A, *infra*, pp. 49–50.

Both these cases involved *derivative* citizenship, a non-judicial proceeding in which an alien-born child acquires United States citizenship by virtue of a parent's naturalization, a lawful admission for permanent residence, and a stated period of residence in the United States while still a minor. Since no naturalization petition is involved in this procedure, Section 347 (b) was not in any way in issue.

[17] The only other change to which petitioner refers is the inclusion in the 1952 Act, in both subsections (a) and (b), of the word "specifically", in the phrases "[e]xcept as otherwise specifically provided". The inclusion of this word in all drafts of the "omnibus bill" seems to have been for rea-

(*c*). The pattern of the savings clauses of the 1940 and 1952 Acts is thus the same. Each contains "broad and sweeping" provisions designed to cover general rights, proceedings and matters; each selects for special treatment the hearing and determination of petitions for naturalization. This is highly compelling evidence, *per se*, that Congress was legislating in two separate and distinct spheres, and that one should not be construed to override or otherwise alter the application of the other.

Even assuming *arguendo* that the broad language of Sections 347 (a) and 405 (a) might properly have controlled were there no subsection (b), the inclusion of the latter in each Act automatically deprives subsection (a) of any applicability to the hearing and determination of petitions for naturalization.

2. If the general savings provisions of Section 405 (a) should be held applicable to the same subject matter exclusively dealt with by Section 405 (b), the latter section would be rendered entirely redundant, five important provisions in title III of the Act would be totally nullified, and unintended inequities and anomalies would result

(*a*). *Redundancy of Section 405 (b).* As stated by Judge Clark in his opinion for the Court of

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sons of style. In the context of the Act, it is clear that this change could not have been intended to subordinate the specific provisions of Section 405 (b) to the general ones contained in Section 405 (a), thus rendering Section 405 (b) completely redundant, nullifying the five title III exceptions, and creating many unintended inequalities and anomalies. See especially *infra*, pp. 29-39.

Appeals, petitioner's contentions regarding the alleged scope of Section 405 (a) would make Section "405 (b) entirely redundant" (R. 17). Such a reading of the statute would not be proper in the absence of very strong evidence that Congress had in fact intended to incorporate a wholly meaningless and futile provision in the Act. There is a total lack of any such evidence. On the other hand there are many indications that point compellingly to the conclusion reached by the court below that Section 405 (b) was included with the intention that its provisions should alone govern the circumstances under which naturalization petitions were to be heard and determined by prior law. If, as urged by petitioner, such terms as "any * * * proceedings * * * or * * * right in process of acquisition" are to be held applicable, in spite of the specific provisions of Section 405 (b), that latter section becomes completely purposeless and loses all meaning. This was unquestionably never intended.[18]

(*b*). *Nullification of Provisions in Title III.* Not only would Section 405 (b) become a wholly redundant and useless provision, but five important provisions found in title III of the 1952 Act would be nullified in violation of a clearly manifested congressional intent. Section 405 (b)

[18] It seems unnecessary to repeat here the authorities or further argument regarding this proposition, which has been already sufficiently covered in our brief in *Menasche* at pp. 19–22 and pp. 30–31.

begins "[e]xcept as otherwise specifically provided in title III".[29] This excepting phrase dovetails with five provisions in title III, all of which begin with language such as "[n]otwithstanding the provisions of section 405 (b)". This harmony of language is in itself strong evidence that there was considered meaning and purpose behind the provisions of Section 405 (b). An examination of the five excepted sections furnishes evidence which is virtually conclusive.

The excepted provisions are Section 318, the one directly affecting petitioner, and Sections 311, 313 (a), 315 (a) and 331 (d).[30] The aliens covered by these sections fall within two groups, those to whom Congress wished to extend benefits which were not available to them under prior law; and those whom Congress wished to bring within certain more stringent and restrictive provisions included in the 1952 Act.

(i). In the first group are those aliens covered by Section 311. Under Section 303 of the 1940 Act, 54 Stat. 1140, 8 U. S. C. (1946 ed.) 703, certain racial restrictions to naturalization were laid down. Section 311 eliminates those restrictions and declares that naturalization shall not

[29] As already indicated, Section 405 (a) is found in title IV of the Act, and thus is not one of the sections which is specifically excepted from Section 405 (b).

[30] The full text of Section 318 is set forth in Appendix B, *infra*, pp. 50-51, and that of the other four sections, in Appendix C, *infra*, pp. 57-63.

be denied or abridged because of race. Thus, petitioners before the 1952 Act, who might otherwise have been ineligible to citizenship on racial grounds, are made eligible by the inclusion in Section 311 of the words "[n]otwithstanding section 405 (b)". If Section 405 (b) is read out of the statute under the construction urged by the petitioner, the racial restrictions will be perpetuated with respect to aliens who had petitions pending on the effective date of the 1952 Act—despite the efforts of Congress to lift them.

Also in the first group are alien enemies. Section 326 of the 1940 Act, 54 Stat. 1150, 8 U. S. C. (1946 ed.) 726, contained no express provisions for the termination date of their alien enemy status, necessitating the ratification of a peace treaty or legislation formally terminating the war before they became eligible for naturalization. Section 331 (d) of the 1952 Act provides for the termination of alien enemy status for purposes of naturalization upon a declaration of the cessation of hostilities by the President or Congress. By the phrase "[n]otwithstanding the provisions of section 405 (b)," Section 331 (d) is made immediately applicable to aliens with petitions already pending on the effective date of the Act. By reason of this excepting provision, such aliens became eligible for naturalization sooner than they otherwise would under the 1940 Act. Here again, under the petitioner's construction of Sec-

tion 405 (b), these aliens would be deprived of a benefit Congress sought to extend to them.

(ii). In the second group are members of the Communist Party and other aliens who may be generally classified under the heading "subversives" (Section 313 (a)); persons who on the basis of their status as aliens refused to serve in the military forces of the United States when called upon to do so under the various draft acts (Section 315 (a)); and aliens who have either been found deportable or who have become the subject of deportation proceedings (Section 318). Undesirability as citizens or alien residents is the common denominator of these three classes; and Congress, recognizing this, took specific steps to insure that immediately upon the effective date of the 1952 Act such aliens should not thereafter have the opportunity to acquire the benefits of United States citizenship.

Of these restrictive provisions, the one with apparently the broadest impact is Section 313, which deals with members of the Communist Party and other subversives. From the earliest days of the Republic, Congress has legislated to deny United States citizenship to aliens reluctant to sever political ties with the countries of their allegiance and in good faith embrace the principles of the Constitution of the United States. In the first naturalization act, passed in 1790, applicants were required to swear to support the

Constitution.[21] In 1795, the language presently in use was first employed: "attached to the Constitution of the United States, and well disposed to the good order and happiness of the same."[22] Coincident with this naturalization legislation, Congress sought to prevent aliens not of this type from establishing permanent residence in the United States.[23]

In 1903, Congress deemed it necessary for the first time to single out for specific treatment anarchists and other disbelievers and opponents of organized government. The Act of March 3, 1903[24] forbade their entry, directed their deportation if already here, and prohibited their naturalization.[25] During the intervening years, as more apparent threats to our national security developed, such legislation was expanded and

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[21] Act of March 26, 1790, 1 Stat. 103.

[22] Act of January 29, 1795, 1 Stat. 414. See also Act of June 25, 1798, 1 Stat. 570; Act of April 14, 1802, 2 Stat. 153.

[23] Section 1, Act of June 25, 1798, 1 Stat. 570; Sections 2 and 38, Act of March 3, 1903, 32 Stat. 1213, 1214, 1221; Section 2 and 38, Act of February 20, 1907, 34 Stat. 898; Section 2, Act of March 26, 1910, 36 Stat. 263; Sections 3 and 28, Immigration Act of 1917, 39 Stat. 875–878, 894. More recently see many provisions contained in the following: Act of October 16, 1918, 40 Stat. 1012; Act of June 5, 1920, 41 Stat. 1008; Act of June 28, 1940, 54 Stat. 670 with amendments; Act of September 23, 1950, 64 Stat. 987. See also Section 212 (a) (28) of the 1952 Act, 8 U. S. C. 1182.

[24] Act of March 3, 1903, sec. 39, 32 Stat. 1222.

[25] Act of June 29, 1906, sec. 7, 34 Stat. 598–599; Nationality Act of 1940, sec. 305, 54 Stat. 1141, 8 U. S. C. (1946 ed.) 705, as amended by sec. 25 of the Internal Security Act of 1950, 64 Stat. 1013.

strengthened, until, in the 1952 Act, we find Section 313 (a) covering the subject in exhaustive detail.[28] Congress not only forbade the naturalization of such persons under the 1952 Act if they had performed any of the proscribed acts within a period of ten years preceding filing of their petitions for naturalization, but, by including the "notwithstanding" clause, sought to insure that the entire section be applicable even to those who had petitions pending when the Act became effective. Congress also in this section absolved from the prohibition those whose membership in proscribed organizations was involuntary or occurred and terminated prior to age sixteen, or was actuated through operation of law, or was for the purpose of obtaining employment or the necessities of life. This highly significant and detailed legislation would be totally nullified, in so far as it expands prior law, as to all persons who had petitions pending when the 1952 Act became effective, if, as petitioner contends, Section 405 (b) is held not to govern exclusively the hearing and determination of petitions for naturalization. There can be no

[28] While petitioner does not extend his argument beyond the proposition that the filing of a naturalization petition gives him a "right in process of acquisition," Menasche's argument is necessarily far broader and would withhold the application of this and other sections for many more years as to anyone who could claim in some way to have commenced the process of acquiring some inchoate right to naturalization."

shadow of doubt that such a result was never the intention of Congress.

With respect to Section 315, the permanent disability incurred by aliens who refused to serve in the United States Armed Forces had been fixed by various draft acts. Congress, to make abundantly sure there should be no misunderstanding that the disability was to outlive the expiration of the various acts, included a specific provision to that effect, which was to be applicable "[n]otwithstanding the provisions of section 405 (b)".[27] This phrase would likewise have to be rendered meaningless if petitioner's contention were to prevail.

It is thus compellingly clear that, as to each of the four sections analyzed above, the "notwithstanding" clause was inserted for the specific purpose of making these sections immediately applicable to the hearing and determination of all naturalization petitions, irrespective of whether the petition had been filed prior or subsequent to the effective date of the Act. An identical intent is disclosed by the inclusion of the same "[n]otwithstanding the provisions of section 405 (b)" clause with the priority provisions of Section 318.

When these provisions were initially enacted as Section 27 of the Subversive Activities Con-

[27] See Senate Report No. 1515, 81st Congress, 2d Session, pp. 725, 731; House Report No. 1365, 82d Congress, 2d Session, pp. 81–82.

trol Act of 1950, they became immediately applicable, because of the absence of any savings provision, to pending proceedings. Section 22 of the 1950 Act, 64 Stat. 1006, 8 U. S. C. (1946 ed., Supp. V) 137–137.8, enlarged in various respects the grounds for deportability, just as these grounds were further enlarged by Section 241 (a) of the 1952 Act. By reenacting in Section 318 the same sort of priority provisions as were included in the 1950 Act and by making these provisions immediately applicable to the hearing and determination of both pending and future petitions, Congress was merely carrying forward its earlier legislation.[28]

(iii). In sum, the draftsmen of the 1952 Act have made clear what they intended by the inclusion of the five "notwithstanding" clauses. They could have had but one purpose in mind:— that of making these five provisions immediately applicable "notwithstanding" the savings provisions which would have otherwise prevented their

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[28] Senate Report No. 1137, 82d Congress, 2d Session, states, at p. 45:

"In general, the provisions relating to preliminary and final hearings on petitions for naturalization are carried over from existing law. * * * The bill also carries forward the provision of the Internal Security Act which prohibits holding of a final hearing on a petition if there is pending against the petitioner a deportation proceeding, and which prohibits naturalization of any person against whom there is outstanding a final order of deportation."

(The Subversive Activities Control Act constitutes title I of the Internal Security Act.)

applicability to the hearing and determination of pending naturalization petitions. They used the words which appeared most appropriate for that purpose, both in the context of prior law and of the Act being drafted.

Thus, to construe Section 405 (a) as covering the hearing and determination of naturalization petitions, to the effective exclusion of Section 405 (b), will have the far reaching result of preventing the application of five separate sections of the 1952 Act to persons whose petitions were pending on the effective date of the 1952 Act. Two of these would deprive the individuals concerned of distinct advantages not otherwise available to them; the other three would defeat Congressional efforts to prevent the granting of United States citizenship to subversive aliens, to aliens who refused to serve, as United States citizens were required to do, in the Armed Forces of the United States, and to aliens who are subject to deportation. A construction which would so thwart the will of Congress, so plainly expressed, would be indefensible.

(c): *Unintended inequities and anomalies.* Petitioner's basic contention that the general terms in Section 405 (a), by reason of the apparent conflict which results from the removal of certain words from their context, predominate over the specific provisions of Section 405 (b), would also be productive of substantial unintended inequities and anomalies. If such broad

expressions as "right in process of acquisition" should be held to govern the hearing and determination of naturalization petitions, that term would also apply, as held by the Court of Appeals for the First Circuit in *United States* v. *Menasche*, 210 F. 2d 809, to declarations of intention and other preliminary steps and conditions precedent in the naturalization process. Cf. *Petition of Pringle*, 122 F. Supp. 90 (E. D. Va.), affirmed *sub nom. United States* v. *Pringle*, 212 F. 2d 878 (C. A. 4). This would result indirectly in placing at a substantial disadvantage certain favored aliens, such as veterans and spouses of United States citizens, who have by law been specially exempted from having to comply with various naturalization requirements. The adoption of petitioner's contention would mean that such favored aliens would have fewer rights with respect to naturalization under prior law than any member of the less favored alien groups who had taken, immediately on arriving in this country, one of the additional required preliminary steps.[29] This point is further spelled out with specific illustrations in our brief in *Menasche*, at pp. 31–34.

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[29] In general, the favored aliens were given a shorter period of residence and were exempted from having to file a declaration of intention. Thus, their naturalization process could begin only after the completion of their required period of United States residence. The less favored group were free to begin their naturalization preliminaries immediately on lawful arrival in this country for permanent residence.

3. Section 405 (a) does not govern the hearing and determination of any naturalization petitions

Petitioner also attempts to find an interstice or hiatus in Section 405 (b), which would permit Section 405 (a) to govern his case, even though Section 405 (b) were held in most conflicting cases to be the savings clause applicable to the hearing and determination of pending naturalization petitions (Pet. Br. pp. 31–36). Petitioner suggests that Section 405 (b) and Section 318 may have been intended to make the 1950 priority provisions govern the determination of pending naturalization petitions where deportation proceedings were subsequently commenced on grounds available under the former law; but that Section 405 (a), by reason of such phrases as "right in process of acquisition", was intended to govern where as here the deportation proceedings are on grounds which were not a basis for deportation under prior law.

As Judge Dimock pointed out, in rejecting this contention, "Congress used no words to indicate that that was its intention" (R. 10). This had not been the scheme used in the 1950 Act when new grounds for deportability had been created and the priority provisions were first enacted. As has already been shown, *supra*, p. 18, these provisions become immediately effective as to all pending naturalization proceedings. The reenactment

of these priority provisions in the 1952 Act, in such a way as to become immediately applicable "[n]otwithstanding" the only savings provision by its terms applicable to the hearing and determination of naturalization petitions, shows the strongest intention to make the 1952 priority provisions similarly applicable to all pending proceedings without exception, rather than the narrower application suggested by petitioner as possibly intended by Congress. The points heretofore developed, *supra*, pp. 19–39, regarding both the legislative history and the statutory context, not only give no support to this "interstice" argument, but, on the contrary, tend affirmatively to rebut it.

It follows that there is no merit in any of petitioner's contentions based on his claim that various of the general terms used in Section 405 (a), including "right in process of acquisition", were intended to apply to the hearing and determination of naturalization petitions. Therefore, Section 405 (b) stands as the only savings provision of the 1952 Act which is applicable to the hearing and determination of naturalization petitions. However, this section, which would have otherwise been applicable to petitioner's case, has been rendered inapplicable by the express inclusion in Section 318 of the phrase "[n]otwithstanding the provisions of section 405 (b)".

B. THE WORDS "NOTWITHSTANDING THE PROVISIONS OF SECTION 405 (B)" PREVENT THE ONLY SAVINGS CLAUSE APPLICABLE TO THE HEARING AND DETERMINATION OF NATURALIZATION PETITIONS FROM GOVERNING CASES INVOLVING THE PRIORITY PROVISIONS OF SECTION 318

Petitioner appears to give tacit recognition to the many difficulties inherent in his main position by suggesting a possible alternative which centers upon the appearance of a semicolon in Section 318 (Pet. Br. 11–12, 27–30). This alternative was properly characterized by Judge Clark as "so minor and ambiguous a punctuational variation" (R. 17), and by Judge Frank as an "attempt at a thoroughgoing semicolonization of § 318" (R. 19). This punctuational contention rests on the use of a semicolon rather than a comma to separate the priority provision relating to final findings of deportability from the one relating to pending deportation proceedings.[30] This contention is directly refuted (1) by petitioner's erroneous assumption as to the origin of the semicolon; (2) by the complete lack of any reason or explanation on the part of Congress to change the previous statutory scheme; (3) by the absence of punctuation in the clause excepting certain veterans from the operation of the priority provisions of Section 318; and (4) by the inherent weakness and fallibility of punctuational arguments generally and by the specific weakness of this one in particular.

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[30] See *infra*, p. 45, for the pertinent text of Section 318 as finally enacted.

Petitioner states (Pet. Br. 11): "When the 'notwithstanding' clause was added to the provision, a semicolon was also added separating petitioners with final findings of deportability from those with deportation proceedings pending." This assumption is incorrect, in so far as it implies that the semicolon was added to the section by reason of the addition of the "notwithstanding" clause. This is shown by reference to the successive drafts of the "omnibus bill", set forth in Appendix B, *infra*, pp. 50–56.

Petitioner correctly states that when these provisions were initially introduced in S. 3455, 81st Congress, 2d Session, and first enacted in the Subversive Activities Control Act of 1950, the two phrases were separated by a comma and omitted any reference to other sections. However, petitioner fails to note that the semicolon was added in S. 716, 82d Congress, 1st Session, although this draft, like the earlier ones, contained no "notwithstanding" clause. Obviously, this change in punctuation was made in accordance with the well recognized rule that a semicolon is used to separate the parts of a sentence more distinctly than a comma. Thereafter, four subsequent "omnibus bills", introduced during the same session, contained this provision in the verbatim form in which it appeared in S. 716. The "notwithstanding" clause was first added to Section 318 in the bill introduced during the following session as S. 2550.

In inserting this addition without changing the semicolon back to a comma, there is not the least indication of any intent to limit the applicability of the "notwithstanding" clause to final findings of deportability. As Judge Dimock stated, in rejecting petitioner's contention in the District Court (R. 11):

> * * * Nevertheless, the complete lack of any explanation for a desire of Congress to change the previous statutory scheme and provide for differentiation of the treatment of deportation proceedings before final finding from that after final finding and the complete absence of any indication, outside of the punctuation, of an intention to make such a change lead me to believe that the introduction of the semicolon does not have the effect which petitioner attributes to it.

It is even not at all clear that any such change would have been in the interest of grammatical nicety, since the semicolon is frequently and properly used to separate clauses or phrases having common dependence on a principal element, or even merely to separate two members of a compound sentence, where one or more of the members contains a comma. See Webster's International Dictionary (2d ed. 1948) p. 2274; cf. United States Government Printing Office Style Manual (1953 ed.) p. 138.

Furthermore, the history of the 1952 Act when in conference furnishes even more compelling

proof that no such distinction was intended. The opponents of stricter naturalization rules succeeded in having the priority provisions of Section 318 entirely deleted from the "omnibus bill" when it was in committee in the House; and as passed by the House, no priority provisions were included in this section (see Appendix B, *infra*, pp. 55–56). However, the priority provisions were reinserted when the House bill came before the Senate, the punctuation and wording appearing in S. 2550 being used. In conference, the Senate version was accepted, but only after it had been modified so as to exempt from its operation certain persons who were either veterans of World War II or who had served honorably in our armed forces. See House Report No. 2096, 82d Congress, 2d Session, p. 129. Thus, as finally enacted, Section 318, in pertinent part, provides:

> SEC. 318. * * * Notwithstanding the provisions of section 405 (b), and except as provided in sections 327 and 328 no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: * * *

Obviously, this exception insisted on by the House conference committee for the benefit of certain favored veterans was intended to apply equally to pending deportation proceedings affecting such veterans, as well as to final deportation findings. Yet this exception phrase was inserted without even a comma. Thus, petitioner urges a reading which would only permit such exempted veterans to be naturalized after a final finding of deportability, but not while such proceedings were pending. This was unquestionably not intended.

Petitioner's punctuational argument is utterly without merit, as was unanimously recognized by the courts below (R. 11, 16–17, 19–20).

CONCLUSION

For the above reasons it is respectfully submitted that the judgment of the Court of Appeals should be affirmed.

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FEBRUARY 1955.

APPENDICES—STATUTES INVOLVED

APPENDIX A: COMPARISON OF SAVINGS CLAUSES IN THE 1940 AND 1952 ACTS

To facilitate comparison, the full text of the savings clauses of the Nationality Act of 1940, Section 347, 54 Stat. 1168, 8 U. S. C. (1946 ed.) 747, and the pertinent portions of the savings clauses of the Immigration and Nationality Act of 1952, 66 Stat. 280, 8 U. S. C. 1101, note, are set forth below in parallel columns.

NATIONALITY ACT OF 1940	IMMIGRATION AND NATIONALITY ACT OF 1952
SAVINGS CLAUSES	SAVINGS CLAUSES
SEC. 347. (a) Nothing contained in either chapter III or in chapter V of this Act, unless otherwise provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization or of citizenship, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any act, thing, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, acts, things, or matters, the statutes or parts of statutes repealed by this Act, are hereby continued in force and effect.	SEC. 405. (a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, pro-

ceedings, statutes [sic], conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. When an immigrant, in possession of an unexpired immigrant visa issued prior to the effective date of this Act, makes application for admission, his admissibility shall be determined under the provisions of law in effect on the date of the issuance of such visa. An application for suspension of deportation under section 19 of the Immigration Act of 1917, as amended, or for adjustment of status under section 1 of the Displaced Persons Act of 1948, as amended, which is pending on the date of enactment of this Act, shall be regarded as a proceeding within the meaning of this subsection.

(b) Any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined within two years thereafter in accordance with the requirements of law in effect when such petition was filed.

(b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

[Subsections (c), (d), and (e) are not here pertinent.]

Reference to the initial draft of these savings clauses, as they appear in the first of the so-called "omnibus bills" introduced by Senator McCarran, S. 3455, 81st Congress, 2d Session,

discloses, *inter alia*, that the words "status, condition" were included, but the words "right in process of acquisition" were omitted. An explanation of the inclusion of this latter term is found in the detailed analysis and comment prepared by the Immigration and Naturalization Service, to which reference is made in Senate Report 1137, 82d Congress, 2d Session, p. 3, and House Report No. 1365, 82d Congress, 2d Session, pp. 27–28. This analysis from the Immigration and Naturalization Service states, at pp. 361–1 and 361–2:

> *Section 361.*[1]
>
> This section is designed to replace section 347 and the last paragraph of section 504 of the 1940 Act. The section provides certain savings clauses in connection with preserving the validity of documents, liability for civil and criminal proceedings, and other matters set forth in the draft, after the bill takes effect.
>
> Subsection (a) will replace section 347 (a) of the 1940 Act. The interpretation of the savings clause in section 347 (a) has been the subject of divergent court decisions and an attempt has been made in this draft to clarify the meaning of the provision. The court decisions in question are *U. S. ex rel. Aberasturi* v. *Cain*, 147 F. (2d) 449, and *Berlodi* v. *McGrath*, 178 F. (2d) 977. The addition of the words "status" and "condition" on line 2, page 241 of the bill is an obvious attempt to overcome the decision in the *Aberasturi*

[1] The savings provisions which were ultimately enacted in Section 405 of the 1952 Act were first introduced as Section 361 of S. 3455.

case. The Service believes that the addition of these words is desirable, since the *Aberasturi* decision was contrary to the Service views of the proper interpretation of section 347 (a) of the 1940 Act. The decision in the *Berdaldi* case, however, was in line with the Service viewpoint. It is further recommended that, in addition, there be added following the word "condition" on line 2, page 241, the words "right in process of acquisition,". It is believed that it would also be desirable to add following "suits" on line 4, page 241, the language "actions, proceedings, statuses, conditions, rights,".

Subsection (b) of the draft replaces section 347 (b) of the 1940 Act except that the provision, that any pending petition at the time of the effective date of that Act should be heard and determined within two years thereafter in accordance with the requirements of law in effect when such petition was filed, has been replaced in this draft with a provision which contains no time limitation for disposing of pending petitions.

Appendix B: Legislative History of Section 318 of the Immigration and Nationality Act of 1952

Section 318 of the Immigration and Nationality Act of 1952, 66 Stat. 244, 8 U. S. C. 1429, provides:

> Sec. 318. Except as otherwise provided in this title, no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions

of this Act. The burden of proof shall be upon such person to show that he entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof he shall be entitled to the production of his immigrant visa, if any, or of other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry, in the custody of the Service. *Notwithstanding the provisions of section 405 (b), and except as provided in sections 324 and 328 no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: Provided*, That the findings of the Attorney General in terminating deportation proceedings or in suspending the deportation of an alien pursuant to the provisions of this Act, shall not be deemed binding in any way upon the naturalization court with respect to the question of whether such person has established his eligibility for naturalization as required by this title. [Italics supplied except for word "Provided."]

The italicized clauses in Section 318 provide for the priority of deportation findings and proceedings over proceedings for naturalization and are generally called "priority provisions." The

legislative history of these priority provisions, in so far as appears pertinent, is set forth below.

(1) *S. 3455, 81st Congress, 2d Session, introduced April 20, 1950.* The legislative origin of the priority provisions of Section 318 of the 1952 Act appears to have been in S. 3455, introduced by Senator McCarran. This bill was the first of the so-called "omnibus bills" to revise and codify in one statute all immigration, nationality and naturalization laws. Section 317 of this bill contained a new provision giving priority to deportation proceedings, no similar provision having been theretofore enacted. It provided, in pertinent part:

> SEC. 317. * * * No person shall be naturalized against whom there is outstanding a final finding of deportability, and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: * * *[2]

(2) *Section 27 of the Subversive Activities Control Act of 1950.* Without waiting for the passage of an "omnibus bill", Senator McCarran incorporated the above section without substantial change in his version of the Subversive Activities Control Act, which was introduced on August 10, 1950, as S. 4037, 81st Congress, 2d Session. It was promptly enacted as Section 27 of this Act, which (as H. R. 9490, 81st Congress, 2d Session)

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[2] No changes here relevant were made in the omitted portions of this section from initial introduction in S. 3455 in 1950 to final enactment in 1952.

became law on September 23, 1950. 64 Stat. 1015, 8 U. S. C. (1946 ed. Supp. V) 729 (c). The wording of the priority provisions was unchanged from that set forth above from S. 3455. In form the section was an amendment to Section 329 of the Nationality Act of 1940, 54 Stat. 1152, 8 U. S. C. (1946 ed.) 729. This Act took immediate effect and contained no savings clause. Section 27 thus operated to stay naturalization proceedings already pending on the date the new law took effect, even when the deportation proceedings were commenced subsequent to the filing of the naturalization petition. *United States ex rel. Jankowski* v. *Shaughnessy*, 186 F. 2d 580 (C. A. 2).

(3) *S. 716, 82d Congress, 1st Session, introduced January 29, 1951.* This was the second version of Senator McCarran's "omnibus bill". In this bill, the priority provisions section was renumbered Section 318, which in pertinent part, provided:

> SEC. 318. * * * No person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act;[3] and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: * * *

It should be noted that this draft, which is the first to use the controversial semicolon, does *not*

[3] This semicolon here replaces the comma used in prior drafts.

include the words "[n]otwithstanding the provisions of section 405 (b)". Thus, the District Court was mistaken in assuming that (R. 11):

> It is true that the semi-colon on which this construction depends was first introduced into the priority section when the words "notwithstanding the provisions of section 405 (b)" were prefixed in the course of the enactment of the Act of 1952.

Petitioner's argument (Pet. Br. 27–30) regarding the effect of the semicolon is, therefore, based on a wholly false initial premise.

Identically worded and punctuated sections appear in each of the next four "omnibus bills" introduced during this session; *i. e.*, H. R. 2379, 82d Congress, 1st Session, introduced February 5, 1951, by Representative Walter; H. R. 2816, 82d Congress, 1st Session, introduced February 22, 1951, by Representative Celler; S. 2055, 82d Congress, 1st Session, introduced August 27, 1951, by Senator McCarran; and H. R. 5678, 82d Congress, 1st Session, introduced October 9, 1951, by Representative Walter.

(4) *S. 2550, 82d Congress, 2d Session, introduced January 29, 1952.* This constituted the fourth version of Senator McCarran's "omnibus bill". Here the words "[n]otwithstanding the provisions of section 404 (b)"[1] were first added to Section 313, forbidding the naturalization of communists and other subversives, to Section 315, forbidding the naturalization of persons relieved from service in the Armed Forces because of alienage, and to Section 318, so as to except these

[1] In S. 2550, Section 404 (b) was identical to the provision which was finally enacted as Section 405 (b) in the 1952 Act.

sections from the savings clause subsection applicable to the hearing and determination of naturalization petitions. In this bill, Section 318, in pertinent part, provided:

> SEC. 318. * * * *Notwithstanding the provisions of section 101 (b)*, no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: * * * [Italics indicate new matter.]

Section 318 appears identically worded and punctuated in S. 2842, 82d Congress, 2d Session, introduced March 12, 1952, by Senator Humphrey, and in H. R. 7032, introduced March 12, 1952, by Representative Roosevelt.

(5) *H. R. 5678, 82d Congress, 2d Session, passed by the House of Representatives April 25, 1952.* Although the priority provisions of Section 318 were included in H. R. 5678 when it was introduced, they were deleted in committee. See H. Rep. No. 1365, 82d Congress, 2d Session, p. 4 (Amendment 26). Section 318 was thus passed by the House with the priority provisions wholly omitted.

(6) *Section 318 of the Immigration and Nationality Act, as finally enacted June 27, 1952.* The final Senate version of the "omnibus bill" reinstated the priority provisions. In conference, the Senate version was accepted, but only

after it had been modified so as to exempt from its operation certain persons who were either Veterans of World War II or who had served honorably in our Armed Forces. See House Report No. 2096, 82d Congress, 2d Session, p. 129. Thus, the section, as finally enacted, in pertinent part, provides:

> SEC. 318. * * * Notwithstanding the provisions of section 405 (b), *and except as provided in sections 327 and 328* no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: * * * [Italics indicate new matter.]

APPENDIX C: OTHER STATUTORY PROVISIONS

Section 241 (a) (4) of the 1952 Act is the provision under which petitioner has become subject to deportation. Section 241 (d) makes 241 (a) (4) applicable to events which took place prior to the effective date of the 1952 Act. Sections 311, 313 (a), 315 (a) and 331 (d), together with Section 318 set forth *supra*, pp. 50–51, are from title III of the 1952 Act and contain the specific exceptions to the savings provisions of Section 405 (b).

Section 310 (a) of the Nationality Act of 1940 is the provision under which petitioner seeks naturalization.

These sections provide:

(1) *Immigration and Nationality Act of 1952*

SEC. 241. (a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

* * * * *

(4) is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution, for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial; [66 Stat. 204, 8 U. S. C. 1251 (a) (4)].

* * * * *

SEC. 241. * * * (d) Except as otherwise specifically provided in this section, the provisions of this section shall be applicable to all aliens belonging to any of the classes enumerated in subsection (a), notwithstanding (1) that any such alien entered the United States prior to the date of enactment of this Act, or (2) that the facts, by reason of which any such alien belongs to any of the classes enumerated in subsection (a), occurred prior to the date of enactment of this Act [66 Stat. 208, 8 U. S. C. 1251 (d)].

* * * * *

SEC. 311. The right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of race or sex or because such person

is married. *Notwithstanding section 405 (b)*,[5] this section shall apply to any person whose petition for naturalization shall hereafter be filed, or shall have been pending on the effective date of this Act [66 Stat. 239, 8 U. S. C. 1422].

SEC. 313. (a) *Notwithstanding the provisions of section 405 (b)*,[6] no person shall hereafter be naturalized as a citizen of the United States—

(1) who advocates or teaches, or who is a member of or affiliated with any organization that advocates or teaches, opposition to all organized government; or

(2) who is a member of or affiliated

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[5] Italics supplied. The italicized words in Section 311 did not appear in the initial draft of the "omnibus bill", S. 3455, 81st Congress, 2d Session. In the detailed analysis prepared by the Immigration and Naturalization Service (see Senate Report No. 1137, 82d Congress, 2d Session, p. 3) at p. 319, the following appears: "The last sentence of section 310 of the bill will make section 310 applicable to petitions filed after the effective date of the bill as well as to those pending when the bill is enacted. In order to avoid any possible conflict with section 361 (b) of the bill, it is suggested that there be inserted at the beginning of line 5, page 160 the phrase 'Notwithstanding section 361 (b),'". In the 1952 Act, as finally adopted, Section 310 of S. 3455 became Section 311, and Section 361 (b) of S. 3455 became Section 405 (b). The italicized words first appeared in the second draft, S. 716, 82d Congress, 1st Session, and similar language appeared thereafter in the various drafts subsequently introduced in both the Senate and the House.

[6] Italics supplied. The italicized words in both Section 313 (a) and Section 315 (a), *infra*, p. 61, first appeared in the fourth McCarran draft, S. 2550, 82d Congress, 2d Session, but were not included in any of the House bills or in Senator Humphrey's subsequently introduced S. 2842, 82d Congress, 2d Session.

with (A) the Communist Party of the United States; (B) any other totalitarian party of the United States; (C) the Communist Political Association; (D) the Communist or other totalitarian party or [sic] any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (E) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; (F) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt; (G) who, regardless of whether he is within any of the other provisions of this section, is a member of or affiliated with any Communist-action organization during the time it is registered or required to be registered under the provisions of section 7 of the Subversive Activities Control Act of 1950; or (H) who, regardless of whether he is within any of the other provisions of this section, is a member of or affiliated with any Communist-front organization during the time it is registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950, unless such alien establishes that he did not have knowledge or reason to believe at the time he became a member of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered have such knowledge or reason to believe) that such organization was a Communist-front organization; or

(3) who, although not within any of the other provisions of this section, advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who is a member of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under authority of such organization or paid for by the funds of such organization; or

(4) who advocates or teaches or who is a member of or affiliated with any organization that advocates or teaches (A) the overthrow by force or violence or other unconstitutional means of the Government of the United States or of all forms of law; or (B) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government because of his or their official character; or (C) the unlawful damage, injury, or destruction of property; or (D) sabotage; or

(5) who writes or publishes or causes to be written or published, or who knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, printed, published, or displayed, or who knowingly has in his possession for the purpose of circulation,

publication, distribution, or display, any written or printed matter, advocating or teaching opposition to all organized government, or advocating (A) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (B) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (C) the unlawful damage, injury, or destruction of property; or (D) sabotage; or (E) the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship; or

(6) who is a member of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subparagraph (5)

[66 Stat. 240, 8 U. S. C. 1424 (a)].

SEC. 315. (a) *Notwithstanding the provisions of section 405 (b)*,[1] any alien who applies or has applied for exemption or discharge from training or service in the Armed Forces or in the National Security Training Corps of the United States on the ground that he is an alien, and is or

[1] Italics supplied. See note 6, *supra*, p. 58.

was relieved or discharged from such training or service on such ground, shall be permanently ineligible to become a citizen of the United States [66 Stat. 242, 8 U. S. C. 1426 (a)].

SEC. 331. * * *

(d) An alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war shall cease to be an alien enemy within the meaning of this section upon the determination by proclamation of the President, or by concurrent resolution of the Congress, that hostilities between the United States and such country, state, or sovereignty have ended. *Notwithstanding the provisions of section 405 (b),** this subsection shall also apply to the case of any

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* Italics supplied. The italicized words in Section 331 (d) were first added in the third McCarran draft, S. 2055, 82d Congress, 1st Sess., and were included in all subsequently introduced drafts of the bill. This change was one recommended in the detailed analysis of S. 716, 82d Congress, 1st Session, prepared by the Immigration and Naturalization Service (cf. Senate Report No. 1137, 82d Congress, 2d Session, p. 3), at p. 331-2:

"If and when subsection (d) is enacted, it is apparently intended that the status of Germans and Japanese as alien enemies, which now exists under section 326 of the 1940 Act, shall be terminated. Presidential Proclamation No. 2714 (12 F. R. 1) has already declared an end of hostilities in World War II as of December 31, 1946. This result seems to follow from the express language of the last sentence of subsection (d), which requires that the provisions of the entire subsection shall apply to petitions which are pending on the effective date of the bill. However, in order to avoid any conflict with the savings clause (section 405 (b)), it is suggested that on line 16, page 212, immediately preceding the word 'This', there be inserted 'Notwithstanding the provisions of section 405 (b),'."

such alien whose petition for naturalization was filed prior to the effective date of this Act and which is still pending on that date [66 Stat. 252, 8 U. S. C. 1442 (d)].

(2) *Nationality Act of 1940*

SEC. 310. (a) Any alien who, after September 21, 1922, and prior to May 24, 1934, has married a citizen of the United States, or any alien who married prior to May 24, 1934, a spouse who was naturalized during such period and during the existence of the marital relation may, if eligible to naturalization, be naturalized upon full and complete compliance with all requirements of the naturalization laws, with the following exceptions:

(1) No declaration of intention shall be required;

(2) In lieu of the five-year period of residence within the United States, and the six months' period of residence in the State where the petitioner resided at the time of filing the petition, the petitioner shall have resided continuously in the United States for at least one year immediately preceding the filing of the petition [54 Stat. 1144, 8 U. S. C. (1946 ed.) 710 (a)].